

ARBITRATION AWARD

Panelist: Lungile Matshaka

Case No: PSHS170-14/15

Date of award: 23 September 2014

In the matter between:

PSA obo Tshele, Tumelo & 13 others

Applicant

and

The Department of Health- Gauteng

Respondent

DETAILS OF THE HEARING AND REPRESENTATION

1. The matter was set down for arbitration hearing on 02 September 2014 at the Department's SG Nursing College in Pretoria. Mr G T W Lourens, PSA official, represented the Applicants while Mr S Mazibuko, Assistant Director: Labour Relations represented the Respondent.

ISSUE TO BE DECIDED

2. I am required to determine whether or not the Applicants were correctly translated in terms OSD (Occupational Specific Dispensation) in accordance with **Resolution 3 of 2009** of the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC), if not, to order the correct translation as envisaged by the said Resolution.

BACKGROUND TO THE ISSUE

3. The Applicants are employees of the Respondent serving under the Emergence Medical Service, to be referred to as “EMS”. They are all respectively stationed at the EMS Health Districts in the Gauteng Province.
4. The Applicants responded to an advert included in the Respondent’s bundle that invited suitable candidates for the positions of Emergence Care Practitioner: Chief Divisional Officer, to be referred to as “CDO”. After the normal interviewing process they were effectively appointed to the said positions in the various District Health Offices in the Gauteng. Some assumed duties on the 1st July and others 1st August 2009.
5. A Collective Agreement known as **Resolution 3 of 2009** given birth to at PHSDSBC and in terms of which OSD made a provision for introduction of occupational specific remuneration and career progression dispensation for Emergence Care Practitioners as well.
6. According to the Applicants in accordance with the OSD they should have been translated with effect from 1 July 2009 to the posts of Sub-District Manager that is equivalent to CDO’s post. Instead they were all laterally translated to the Station Manager’s posts in the various District Health Centres respectively.
7. After their lateral transfers to the Station Manager’s positions respectively, they then lodged a grievance of unfair demotion. This was on the strength of a colleague’s case, namely Siwele, whose case had exactly the same merits that applied to theirs. Mr Siwele’s case went through arbitration in this Council to the Labour Court for endorsement. The latter had to issue an order for his translation to the Sub-District Manager’s position. A copy of the award, **PSHS536-10/11** as well as the Labour Court order is included in the Applicants’ bundle.
8. It is therefore the Applicants’ prayer that they be treated in the same manner as in the case of Mr Siwele.
9. On the other hand the Respondent asserts that it has acted correctly and in line with the OSD. It is further the Respondent’s view that what is being dealt with in this matter is translation and not promotion. If it was the latter, the posts should have been advertised. It is further denied that the CDO’s position is equivalent to Sub-District Manager’s post.

SURVEY OF THE EVIDENCE AND ARGUMENTS

The Applicants' evidence

10. The evidence of the Applicants' first witness, Mr Siwele, was to the effect that:
11. Prior to joining the Respondent's employment, he was an employee of the Provincial Department of Health in Limpopo. He saw the same Respondent's advert for CDO's positions in the Gauteng Province. He applied and accordingly appointed in August 2006. Because he was already serving in the Health Department, to him the appointment was a promotional transfer.
12. The differences between the employer and himself arose in 2009 when the HR gave him a lateral translation letter to a Station Manager's post. He was unhappy about this development. After complaining to no avail he lodged a grievance. The matter was not resolved until he had to refer it to the Council. It remained unresolved at conciliation. Pursuing it at arbitration the award (**PSHS536-10/11**) issued was in his favour. The decision taken therefore was to order the Respondent to translate him to a Sub-District Manager's post.
13. After the issuing of the award the Respondent did not honour until he had to apply to the Labour Court which then issued a Court Order. It was only then that the Respondent issued him a letter translating him to the post of Sub-District Manager's post with effect from 1 July 2009.
14. In cross-examination Mr Siwele confirmed that before the dispute he was translated to the Station Manager's post just like the Applicants in the present case. Yet as it turned out in terms of the award and endorsed by the Labour Court he was translated to Sub-District Manager's post at level 9.
15. In re-examination Mr Siwele confirmed that after OSD the post of an Assistant Director has been accorded the status of a District Manager. Below this post is the Sub-District Manager's post. In the OSD document there is also nothing that says that CDO is equivalent to the Station Manager's post.
16. The second witness, Willem Johan Van Coller, to be referred to as "Willem", testified as follows:
 - 16.1 He applied for one of the positions of CDOs advertised for the Gauteng Province in the Sedibeng District. After being made an offer he assumed duties on 01 August 2006.
 - 16.2 Prior to OSD a meeting was called by the Chief Executive Officer, Mr Sithole, of the entire Province. He did not attend the meeting owing to ceremonial and official duties on the day in question. He learnt from his colleagues who attended that CDOs were being translated to Station Managers Operational.

- 16.3 Willem made reference to a letter of translation dated 05 May 2010 and relating to the OSD addressed to one the Applicants, Mr Tshele that confirmed the latter's new job title as Station Manager with effect from 1 July 2009. He further pointed out that some of them received the same letter and other nothing.
- 16.4 They nevertheless lodged a combined grievance with the employer on the basis that they felt aggrieved as one of their colleagues, Mr Siwele, had been correctly translated after the latter had pursued the matter right up to the Labour Court. All that they asking is to be translated correctly with the remuneration thereof as it was the case in that of Mr Siwele.
- 16.5 Willem also made it clear before the OSD he reported to one Mr Makalima, whose post level was at 9 and after OSD was at 10 and designation changed to that of the District Manager, to whom he is now reporting. This therefore means that there is now a level between the Station Manager and District Manager.
- 16.6 In cross-examination Willem confirmed that before OSD the level of Station Manager's was 7 (seven) and after OSD is 8. The level of CDO was 8 and it still remains at 8 and only the designation has changed to that of Station Manager. The Assistant Director's position which was at level 9 after OSD has changed to level 10 and now designated as the District Manager.
- 16.7 It is therefore their plea that they also be translated to the correct position i.e. Sub-District Manager.

The Respondent's evidence

- 16.8 The Respondent's single witness, Mr Frans Motimane, briefly testified that he knows the OSD and that its purpose is to introduce an occupational specific remuneration and career progression dispensation for Emergence Care Practitioners in the medical field.
- 16.9 In cross-examination Mr Motimane conceded that that there is nowhere in the OSD document where it is says that the Assistant Director's position is equivalent to District Manager's position. Likewise there is nowhere where it says that the CDO is being translated to the Station Manager's position.
- 16.10 Mr Motimane could not dispute the fact that the OSD speaks about translation to a position and all that it encompasses.

ANALYSIS OF THE EVIDENCE AND ARGUMENTS

17. As a point of departure section 24(1) of the Labour Relations Act 66 of 1995, as amended, makes it clear that every collective agreement concluded '*must provide for a procedure to resolve any dispute about the interpretation or application of the **collective agreement***'. It goes on to state that the procedure must first require the parties to attempt to resolve the dispute through conciliation and, if the dispute remains unresolved, to resolve it through arbitration.
18. The present case has followed the above clearly enunciated course. I have to re-iterate that I am required to determine whether or not the Applicants were correctly translated in terms OSD in accordance with **Resolution 3 of 2009** of the Public Health and Social Development Sectoral Bargaining Council (PHSDSBC) as envisaged by the said Resolution i.e. Collective Agreement.
19. Briefly reflecting firstly on the evidence of the Applicants through their two witnesses I have to comment as follows:
- 19.1 In response to an advert the Applicants applied to the positions of CDO in the health districts of the Gauteng Province. On appointments some assumed duties on 1 July 2006 and others on 1 August 2006 respectively.
- 19.2 After the implementation of the OSD in terms of **Resolution 3 of 2009**, the Applicants were laterally translated to positions of Station Managers in their respective Districts.
- 19.3 What sparked off the present dispute is the case of one Mr Siwele whose translation to the relevant OSD, following an award issued in his favour and endorsed by the Labour Court, placed him to the position of Sub-District Manager, a level higher than that of the Applicants.
- 19.4 Mr Siwele's evidence in essence threw light what he had to go through before his translation was effectively made by the Respondent's EMS' Human Resources Manager on 18 July 2012 in terms the letter included in the Respondent's bundle.
- 19.5 Of significance it is important to note that Mr Siwele applied at the same time as the Applicants and also appointed as CDO in one of the districts of the Gauteng Province. Further, his translation to the relevant OSD, just like in the Applicants' case placed him as the Station Manager's position. This is what he successfully challenged resulting him being translated to Sub-District Manager's position.

- 19.6 If the Respondent was not satisfied with the outcome of Mr Siwele's case, one would have thought that it would have taken award on review to any it would have deemed it necessary. This did not happen.
- 19.7 I have no difficulty in coming to the conclusion that the Applicants' dispute in essence is the same as that of Mr Siwele and that in my mind there is no basis to treat them differently.
20. On the other hand the Respondent's very brief evidence through its witness did not respond to the essence of the Applicants' dispute. The OSD only speaks about translation and not promotion. I further accept the fact that the Applicants in terms salary did benefit, but not to the extent of Mr Siwele in terms salary and position.
21. I therefore find that the Applicants as detailed below should be treated in the same manner as Mr Siwele in terms of translation to the relevant OSD.

AWARD

I make the following award:

22. I find that the Applicants mentioned hereunder were not correctly translated to the relevant OSD in terms of **Resolution 3 of 2009**.
23. I therefore order that the mentioned Applicants be accordingly translated to the rank of Sub-District Manager.
24. The Applicants who duly attended the proceedings on the 2nd of September are the following:
- 24.1 T. L. Tshela – Persal No. : 90826523
- 24.2 T. S. Kgomo – Persal No. : 81878028
- 24.3 D. M. R. Tsholetsane – Persal No. : 22352228
- 24.4 N. A. Banoo – Persal No.: 22335633
- 24.5 R. Balgobind – Persal No.: 62109529
- 24.6 S. Manendze – Persal No.: 81676191
- 24.7 T. Q. Bob – Persal No.: 18748384
- 24.8 N. E. Michael – Persal No.: 62103423
- 24.9 C. Van Niekerk – Persal No.: 22328068
- 24.10 W. J. Van Coller – Persal No.: 81880111
25. The effect of the translation of the Applicants as detailed above in paragraph 24 would be as follows:

- 25.1 Date of effect : 01 July 2009

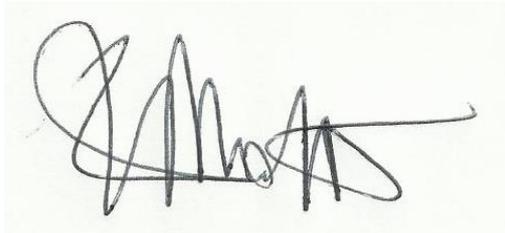
25.2 Job Title : EMS Sub District Manager

25.3 Salary Grade : 01

25.4 Salary per annum : R197 535.00

25.5 Institution : EMS

26. I order the Respondent, Department of Health – Gauteng Province, to effect the above translation to the Applicants mentioned in paragraph 24 on or before 31 October 2014.

A handwritten signature in black ink on a light-colored background. The signature is stylized and appears to read 'Lungile Matshaka'.

Lungile Matshaka

PHSDSBC Panellist